

THE ILLEGALITY OF U.S. INTERVENTION IN VIETNAM:
VIOLATIONS OF THE KEY PROVISIONS OF THE U.N. CHARTER

All members /of the U.N./ shall refrain ... from the threat or use of force ... in any ... manner inconsistent with the purposes of the United Nations (Art. 2(4)) ... to develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples ... (Art. 1(2))

This is the most basic and most important provision of the U.N. Charter. The Truman-Doctrine cold-war policy of "containing communism" by every means, fair and foul, is a clear violation of this provision of the Charter, and is the root cause of the Vietnam war and most other threats to world peace in the postwar period.

In pursuit of this policy the U.S. has violated many laws, both domestic and international. In Vietnam we are now waging a major war without Congress having had any real opportunity to decide -- as required by the U.S. Constitution (Art. 8(11)) -- whether this dangerous venture is in the best interests of the nation. The torture and murder of prisoners, the wholesale and almost indiscriminate killing and maiming of women and children, and the forcible mass relocation of civilian populations from their own homes and farms to concentration camps: all these are outrageous violations of the 1949 Red Cross treaty. The multiple violations of our unilateral promise that we would not upset the 1954 Geneva Armistice agreement constitute a "crime against the peace" as defined in the Nuremberg Charter under which Nazi leaders were condemned to death after World War II.

However, the most dangerous to our own long-run self-interest are the violations of the principles of the U.N. Charter. The U.N. is not yet able to enforce the provisions of the Charter (or any other international laws and agreements) when they are violated by Great Powers. But the Charter provides the strongest basis we have for a workable code of international law. Moreover, as a duly ratified treaty, the U.N. Charter is part of the "supreme law" of the U.S. itself (Art. 6(2) of the U.S. Constitution), and can thus be applied and enforced by our own courts.

Stronger emphasis on U.S. violations of the U.N. Charter would not only provide a powerful weapon against the Vietnam war, but would make a valuable contribution towards the longer-run goal of establishing a sounder basis for real international peace and order.

In addition to the provision cited above, the U.N. Charter provides (Art. 2(4)):

All members shall refrain ... from the threat or use of force against the territorial integrity or political independence of any state ...

The heart of the 1954 Geneva Armistice Agreements which established Vietnam, de jure, as an independent state, is contained in these key provisions:

...the military demarcation line /at the 17th parallel/ is provisional and should not in any way be interpreted as constituting a political or territorial boundary.

...general elections which will bring about the unification of Vietnam...shall be held in July, 1956, under supervision of an international commission...

These armistice provisions were, in turn, based on two key facts: (1) The Communist-led Vietminh, under Ho Chi Minh, had won the country's independence from France by militarily defeating the American-armed and American-financed French army. At the time of the armistice the Vietminh were in actual control of most of the country, south as well as north. (2) They had also quite clearly "won the hearts and minds of the people" -- Pres. Eisenhower, in his memoirs, said that in a free election "possibly 80% of the populace would have voted for Ho Chi Minh as their leader." The Viet-

minh temporarily withdrew their forces north of the 17th parallel, as provided in the Geneva Agreements, on the assurance that the country would be peacefully reunited under their leadership by the promised 1956 elections.

The subsequent destruction of these Agreements has been the main reason for the distrust by north Vietnam and the National Liberation Front (NLF) of any "negotiated settlement" with the U.S. The French, under U.S. pressure and without honoring their own commitment regarding the re-unification elections, withdrew from Vietnam a year ahead of schedule, leaving their Saigon puppet regime in nominal control of the south. With U.S. approval and military support this regime openly repudiated the Geneva Agreements and refused to hold the elections. Thus, after 1956 the Saigon regime clearly had no legal basis for continued independent authority; the U.S. had no legal basis for its continued military presence in Vietnam; it was only the implied threat of direct U.S. military intervention which prevented the Vietminh from re-occupying the south to enforce the key election provision of the armistice agreements. U.S. efforts to detach the southern half of Vietnam as an independent state under a foreign-dominated government clearly violate both the territorial integrity of Vietnam, as this state was established by the Geneva Agreements, and the right of self-determination of the Vietnamese people.

If the U.S. had in fact been able to establish in south Vietnam a viable government which could have maintained itself primarily by its own efforts, our original illegal action might have become a fait accompli -- like the U.S.-sponsored overthrow of the Guatemala government in 1954. But the available evidence indicates that the NLF has about as much popular support in 1967 as it did in 1954: the September 1966 "elections" in south Vietnam had to be rigged to exclude participation of any supporters of the NLF or even "neutralists"; the recent CBS "public opinion poll" in the government controlled sections of south Vietnam suggests that the majority opinion in all of south Vietnam would strongly oppose the U.S.-supported regime; and the NLF still seems to have overwhelming superiority in military intelligence and fighting morale. Thus the U.S. has been forced to use ever-increasing violence to maintain its position and continues everyday to violate the basic provisions of the U.N. Charter.

The importance of the self-determination provision of the Charter lies not merely in its recognition of the moral rights of the peoples concerned, but from the recognition that it is absolutely necessary "to develop friendly relations among nations" -- that unilateral foreign intervention in violation of these principles almost invariably causes sympathetic intervention by other powers, with resulting serious international tension and threats to world peace. It is also important to note that where people are denied peaceful and legal means of choosing their own leaders and effecting the public policies which they themselves feel would meet their own needs, the right of self-determination necessarily implies the right to revolution. This right has seldom been better expressed than in our own Declaration of Independence, when we exercised this right ourselves: Governments derive "their just powers from the consent of the governed...When a long train of abuses and usurpations...evidence a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security."

Since the beginning of the atomic era, it has been obvious that the very survival of civilization depends on establishing "the rule of law" in international relations -- not the "might makes right" type of law established unilaterally, in its own interest, by the strongest military power, but law based on justice, on mutual respect and tolerance for all religions and ideologies of the world's peoples. Although the U.S. controls over two-thirds of the world's wealth and production, we have only 6% of its population. Two-thirds of the world is poverty-stricken; two-thirds is colored; and most of the world's people live in Asia. Clearly in the perspective of history, our present military superiority can last no more than a very few years. During these years we must use our power and wealth and prestige to strengthen the United Nations and to establish a generally respected body of international law.